

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL PERKINS, 95A0851,

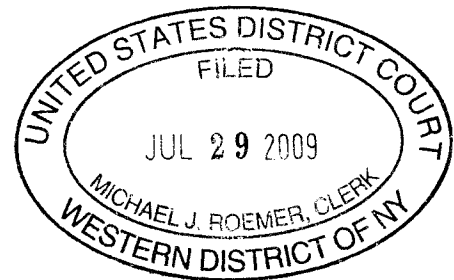
Plaintiff,

-v-

DAVID F. NAPOLI, DANIEL J. CHAPMAN,
MICHAEL E. BURGETT, JAMES E. CLEVELAND,
STEVE J. FORD and DAVID E. TADDER,

Defendants.

DECISION AND ORDER
09-CV-6302CJS



Plaintiff *pro se* has file an Amended Complaint (Docket # 3) and motions for a Temporary Restraining Order (TRO) (Docket # 4) and Preliminary Injunction (Docket # 7), in addition to a request for copies of exhibits (Docket # 5) .

Because the complaint has not yet been served, plaintiff is entitled to file one amended complaint as a matter of course. FED. R. CIV. P. 15(a)(1)(A). The Clerk of Court is directed to file plaintiff's amended complaint, attach the exhibits filed with the original complaint, and forward to the Marshall's Service for service in place of the original complaint.

Plaintiff has also moved for temporary and preliminary injunctive relief seeking to restrain defendants from assaulting plaintiff in retaliation for filing this action. Plaintiff specifically seeks to be transferred out of Southport Correctional Facility in order to accomplish this goal. Plaintiff's allegations do not show that immediate and irreparable injury, loss, or damage will result to plaintiff before the

adverse party can be heard in opposition. Federal Rules of Civil Procedure 65(a) and (b). The motions for temporary and preliminary injunctive relief are, therefore, denied at this time, pending response by defendants to this Order. In view of the serious nature of plaintiff's allegations, however, the Court directs that the Clerk of the Court take the following steps to apprise the defendants of plaintiff's motion, and directs defendants to answer the motion within twenty days of service. First, because the Court anticipates that defendants will be represented by the New York State Attorney General, the Clerk is directed to mail a copy of the Amended Complaint and the motion papers, together with this Order, to the Assistant Attorney General in Charge, Attorney General's Office, 144 Exchange Street, Suite 200, Rochester, New York 14614. Second, the Clerk of the Court is directed to ensure that all necessary paperwork is submitted to the U.S. Marshal without delay.

With regard to plaintiff's request for copies of the exhibits he filed. Plaintiff indicates that due to lack of funds, he had to file his originals of exhibits in this case. Plaintiff will need those exhibits to conduct litigation in this case. For that reason, the Clerk of Court is directed to provide plaintiff with copies of the exhibits attached to the original complaint.

IT IS SO ORDERED.



HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

Dated:

July 28, 2009